85-369

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

No _____

STANLEY V. TUCKER,
Petitioner

-v-

HARTFORD FEDERAL S & L ASSOCIATION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

STANLEY V. TUCKER
Petitioner
Box 35
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5 pp

MAJOR QUESTION PRESENTED FOR REVIEW

The state courts of Conn have for first time interpreted a federal question of state wide importance in a manner contrary to decisions of this Honorable Court Mathews v Eldridge, 424 US 319 (1976) and Memphis Light & Water Div v Craft, 436 US 1 (1978)

QUESTIONS PRESENTED FOR REVIEW

1. Did the Conn. Sup Ct rule contrary to opinion of this Court in the appointment of rent receiver WITHOUT DUE NOTICE including notice of state & federal defenses.
2. Did the Conn Sup Ct rule contrary to the opinion of this court in appointment of rent rent receiver WITHOUT DUE NOTICE including notice of speedy mechanizm to terminate with damages & counsel fees a receiver incompetent or negligent.
3. Did the Conn. Sup Ct rule contrary to the opinion of this Court in appointment of rent receiver WITHOUT EQUAL PROTECTION by denying to Owner right to post equal bond and be rent receiver of property.

4. Did the Conn Sup Ct rule contrary to the opinion of this Court by failure to terminate a rent receiver incompetent or negligent and by failure to appoint a replacement who in 60-90 days would restore the property with the rents

5. Did the Conn Sup Ct rule contrary to the opinion of this Court by failure to hold P.B. 505 - 510 UNCONSTITUTIONAL & VOID

6. Is the judgment below void as without due process by reason that the plaintiff bank failed to prove ACCELERATION of debt? Or offer evidence.

7. Did the lower court rule contrary to the opinion of this Court by awarding for first time counsel fees to a federally chartered bank for bankruptcy proceedings in which it was exempt being federally protected. Without evidence/due process.

8. Did the Conn Sup Ct rule contrary to the opinion of this court on counter-claims claimed bank a "fiduciary" as to damages by rent receiver.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

No_____

STANLEY V. TUCKER,

-v- Petitioner

HARTFORD FEDERAL SAVINGS & LOAN ASSOCIATION

PETITION FOR CERTIORARI TO THE CONN. SUPREME COURT

Petioner prays that a Writ of Certiorari issue to review the judgment of the Conn. Sup CT entered May 7th, 1985 Timely petition for rehearing filed May 17, 1985 and denied on June 4th, 1985

CITATION TO OPINIONS BELOW

The opinion of the Conn. Sup Ct is reported 196 Conn 172.

JURISDICTION

The judgment of the Conn. Sup Ct denying ReHearing was entered 6/4/85 The jurisdiction of this court is invoked under Title 28 USC 1257 (3)

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a denial of substantive due process and due notice and equal protection of the laws, the 5th and 14th Amendments to the U.S. Constitution as set forth in Appendix C, infra.

This case involves Conn. State Practice Book Sections 506-510 under color of which orders were made claimed unconstitutional & void.

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

Sec. 507. ——Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of his appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of and described as (*describe generally, e.g., No. 93 Maple Street*):

Now, therefore, if said A shall well and truly perform his duties under such appointment, then this obligation shall be void, otherwise in full force and effect.
(P.B. 1963, Sec. 428.)

Sec. 508. ——Discharge

Any party in interest may at any time move for the discharge of the receiver.
(P.B. 1963, Sec. 429.)

Sec. 509. ——Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by him in chambers to the court in which the action may be pending.

(P.B. 1963, Sec. 430.)

Sec. 510. ——Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1963, Sec. 431.)

STATEMENT OF THE CASE

Consolidated in this action are four companion foreclosure actions where the Plaintiff Bank in 1963-1965 advanced mortgage money on said proper Defendant paid all payments on time for approx 15 years until a rent receiver appointed by untility, HARTFORD ELECTRIC LIGHT CO who failed to pay mortgages but held money ample in escrow for years Bank never demanded payment which it was entitled to by reason of priority lien but instead started the foreclosure actions and moved to appoint its own foreclosure rent Receiver, Frank Smith

Rent receiver Smith so negligent and incompetent that taxes & mortgages went unpaid almost three years and defendant moved to terminate Smith but was opposed for 9 months by bank & no court decision ever made. -3-

After all tenants stopped paying rent to Smith because of his failure to do repairs or provide heat he moved to be and was terminated, Sept 1981. Bank moved to appoint new rent receiver and Defendant moved to hold P. B. 505-510 unconstitutional and void denied by court and now on petition to this court. Defendant moved to be appointed rent receiver on same terms as bank (equal bond) but application ignored and never ruled on by court although heard.

The new rent receiver, Plaza Realty was as negligent or incompetent as Smith. Due to intense inflation rents in area doubled and market values doubled but Plaza WITHCUT COURT PERMISSION lowered rents to 1980 levels and abandoned and

boarded up with plywood apartment after apartment WITHOUT COURT PERMISSION! Defendant refused copy of rent receiver report altho given to bank and/ or its counsel.

In 1983 Plaza Realty moved the court for permission to destroy one of the properties, a two family house at 69 Amity, on grounds both tenants refused to pay rent. Judge Brennen then terminated Plaza and restored Defdndant/Owner to possession and control on grounds housing badly needed. Transcript of key remarks and reasons in Appendix D 1.

While Defendant sought to hold the Rent Receiver in contempt and/or to control activity all motions denied by court and the two terminations described above ARE ONLY KNOWN CASES TO DEFENDANT WHERE CONNECTICUT STATE COURT TERMINATED RECEIVER'

Plaintiff Bank pleaded it "had accelerated" debt but it turned out that bank relied on counsel to "accelerate" but counsel assumed bank "had accelerated". The Conn. Supreme Court held (Appendix) that pleadings "accelerated debt" altho the pleadings read contrary to this claim and although this claim not raised in lower court and other State Supreme Courts ruled contrary on this issue.

In despirate attempt to save his properties from destruction by bank's rent receiver in 1976, 1977 and 1978 Defendant filed for Chapter 11 Real Property Arrangement Plans but all dismissed for failure to get bank consents. Hartford Federal S & L Asso. appeared and was immediately GRANTED RELIEF FROM AUTOMATIC STAY on grounds

it was federally chartered, its lien federally protected, it was exempt.

Nevertheless on trial in state court substantial fees awarded of $38,590. including large sums for bankruptcy court time. No testimony given by bank to support claim for fees altho the defendant testified that bank did not meet statutory requirements and was not entitled to the fees.

Trial court upheld by Conn Sup Ct refused to recognize defenses & counter-claims against bank as fiduciary in its seizure of rents by mortgage provision for "assignment of rents."

SUBSTANTIAL REASONS FOR GRANTING WRIT

I. PETITIONER HAS BEEN DENIED DUE PROCESS OF LAW BY STATE COURT RENT RECEIVERSHIP THAT VIOLATES THE FEDERAL CONSTITUTION.

Over the centures much debate has taken place over the meaning of due process and this latest decision of Conn. Sup Ct is in SHARP CONFLICT with decisions of this Honorable Court.

Fuentes v Shevlin
407 US at 80

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 1 Wall. 223, 233. See *Windsor* v. *McVeigh*, 93 U. S. 274; *Hovey* v. *Elliott*, 167 U. S. 409; *Grannis* v. *Ordean*, 234 U. S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U. S. 545, 552.

While Connecticut long enjoyed name "Constitution State" because early patriots hid the Charter from King George's men it would now be more appropirate to call it the "Hearsay State" due to Conn.

Practic Book which authorizes use of hearsay on matters such as appointment of rent receivers. Hearsay without question is a major working ingredient in the Conn. State Court system daily on a massive basis without knowledge or consent of clients.

I.A. RULES 506-510 ARE OUTSIDE CONSTITUTIONAL LIMITS GIVEN CONN SUP CT

G S 51-14 "The judges of the Supreme Court shall adopt rules regulating pleading, practice and procedure in judicial proceedings in the courts. Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of the Courts"

These rules do just the opposite of the statutory limitation - they enlarge and abridge substantive rights and create illegal new jurisdictional power for the state courts!

This Court has repeatedly rejected rules of court adopted by State Supreme Courts that violate federal rights or abridge them.

U.S. V Sherwood
312 US 584 1941

> "Power of court to make rules of practice gives it no authority to modify or enlarge substantive rights"

Recently this court struck down as unconstitutional Arizona state court rules that prohibited attorney advertising as violation of 1st amendment.

Bates v State Bar - Arizona
433 US 350 1977

> "..justification advanced by appellee inadequate to support suppression of all advertising by attorneys"

More recently the same problem arose with Virginia state court rules violating the U.S. Constitution.

Consumers Union v American Bar Asso.
505 F Supp 822 USDC ED Virginia 1981

Consumers Union v American Bar Association
505 F Supp 822
USDC ED Virginia 1981

Consumer organization brought civil rights suit against Virginia Supreme Court and its Chief Justice seeking a declaration that their promulgation and enforcement of rule prohibiting attorney advertising was unconstitutional. A three-judge District Court, Eastern District of Virginia, 427 F.Supp. 506, rendered judgment for the consumer organization. The United States Supreme Court, 433 U.S. 917, 97 S.Ct. 2993, 53 L.Ed.2d 1104, vacated that judgment. On remand, the three-judge District Court, 470 F.Supp. 1055, held again the advertising ban unconstitutional and assessed an award of attorney fees against the Virginia Supreme Court and its Chief Justice in his official capacity and the Virginia Supreme Court appealed. The Supreme Court, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641, vacated and remanded. On remand, the District Court, Albert V. Bryan, Senior Circuit Judge, held that plaintiff was entitled to collect attorney fees from Supreme Court of Virginia upon prevailing in its civil rights suit to invalidate the advertising provision of the Virginia bar code; however, because Virginia Bar endeavored to have code amended to conform to constitutional standards, no fees would be assessed against the Bar.

I.B. FOROVER A CENTURY CONN. SUP CT ESCAPED REVIEW OF CONSTITUTIONALITY P.B. 506-510 DECLARING THAT ORDERS ARE "NOT APPEALABLE"

A long line of cases dates back a century or more of dismissals of appeals of rent receivership orders as "not appealable" - No opinion given - the grounds are esoteric, mysterious, devious and unknown to the public. No opinion can be found to support this massive denial of judicial review.

Hartford National Bank v Tucker
195 Conn at 223 Feb 1985

No appeal lies from the appointment of a receiver of rents in a foreclosure action.[4] *Young* v. *Polish Loan & Industrial Corporation*, 126 Conn. 714, 715, 11 A.2d 395 (1940); *Silver* v. *Kingston Realty Corporation*, 114 Conn. 349, 350n, 158 A. 889 (1932). Review of that ruling must await an appeal from the final judgment of foreclosure. *Hartford Federal Savings & Loan Assn.* v. *Tucker*, 192 Conn. 1, 5, 469 A.2d 778 (1984).

In 1972 this Petitioner filed identical briefs in Conn Sup Ct and US Sup Ct challenging on constitutional grounds pre judgment attachments, GS 52-279, made without notice or hearing.

The Conn Sup Ct dismissed the appeal claiming the issues "not understood" But this court granted certiorari, Tucker v Maher, 405 US 1052. On remand a Three Judge District Court held a hearing but before decision former Gov Meskill signed into law the new Pre-Judgement Remedy Act, GS 52-278 a-n. While the new act MADE ALL PRE JUDGMENT ORDERS APPEALABLE P. B. 506-510 BEING ILLEGAL COURT RULES escaped the attention of the legislature.

I.C. PETITIONER WAS DEPRIVED OF NOTICE UNDER RULES THAT ALLOW DEPRIVATION OF NOTICE AND HEARING.

For many decades this Honorable Court's decisions made clear that notice and hearing constitute minimum Due Process requirements.

N Georgia Finishing v Di-Chem
419 US at 606

N Georgia Finishing v Di Chem
419 US at 606

That the debtor was deprived of only the use and possession of the property, and perhaps only temporarily, did not put the seizure beyond scrutiny under the Due Process Clause. "The Fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause." *Id.*, at 86. Although the length or severity of a deprivation of use or possession would be another factor to weigh in determining the appropriate form of hearing, it was not deemed to be determinative of the right to a hearing of some sort. Because the official seizures had been carried out without notice and without opportunity for a hearing or other safeguard against mistaken repossession, they were held to be in violation of the Fourteenth Amendment.

But the Conn Supreme Ct argues in its line of cases that no appeal lies until "final judgment" because "Due Notice" is not required and the debtor must wait to appeal from final judgment, when UNFORTUNATELY THE DAMAGES ALL DONE - IT IS TOO LATE!

Young v Polish Loan
126 Conn 714,715

I.D. CONN PRACTICE BOOK 506 AUTHORIZES APPOINTMENT OF RENT RECEIVER WITH-A HEARING AND WITHOUT NOTICE

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.

(P.B. 1963, Sec. 427.)

The above language permitted the court below to appoint first Smith and next Plaza on "hearsay" by bank's counsel. The motion by Defendant to be appointed rent receiver by posting equal bond to Plaza was heard but ignored and not ruled on by court. It is unheard of in Conn. for a property owner to be given any rights in a proceeding with a bank let alone the right, upheld in a long line of creditor/debtor cases, by This Honorable Court to equal treatment in state court

Mitchell v Grant
416 US at 606

The writ is obtainable on the creditor's *ex parte* application, without notice to the debtor or opportunity for a hearing, but the statute entitles the debtor immediately to seek dissolution of the writ, which must be ordered unless the creditor "proves the grounds upon which the writ was issued," Art. 3506, the existence of the debt, lien, and delinquency, failing which the court may order return of the property and assess damages in favor of the debtor, including attorney's fees.[8]

The debtor, with or without moving to dissolve the sequestration, may also regain possession by filing his own bond to protect the creditor against interim damage

I. E. CONN P.B. 506 AUTHORIZES THE APPOINTMENT OF RENT RECEIVER ON HEARSAY

P. B. 506 .."the court may examine.. his attorney.."

This is precisely the proceedure used in the initial appointment of 1st rent receiver and the appointment of substitute rent receiver. No good grounds given in motion, no testimony given by bank, the court made the appointment based on hearsay allegations

of counsel just as PB 506 provides ..."the court may examine.. his attorney.."

But such crude creditor mechanisms were rejected by this Court in a line of cases holding that a "meaningful" hearing is required for any deprivation of property rights no matter how small.

Mitchell v Grant
416 US 607

> "Petitioner's claim must accordingly be narrowed to one for a hearing on the issues in the possessory action - default, the existence of a lien, and possession of the debtor - before property is taken"

While during early years of rent receivership Petitioner applied to court to terminate and control rent receiver Conn PB 506-510 are barren of a word of standards or grounds and motions all disregarded and denied by state courts.

I.F. APPOINTMENT OF SUBSTITUTE RENT RECEIVER UNDER PB 506-510 VIOLATES THIS COURT's COMMAND IN MATHEWS V ELDRIDGE AND IN MEMPHIS LIGHT GAS & WATER v CRAFT

In 1976 this Honorable Court announced for first time the principle that notice was not due process notice where proeprty rights involved UNLESS THE NOTICE GAVE NOTICE TO DEBTOR OF HIS STATE & FEDERAL RIGHTS & PROVIDED A QUICK AND EASY MEANS OF ACHIEVING THESE RIGHTS.

Mathews v Eldridge
424 US 319

"Due process requires consideration of:

First - the private interest that will be affected by official action

Second-Risk of Erronious deprivation through proceedures used.

Third - Governments interest in added proceedural requirements"

These requirements were expanded, clarifed and affirmed in Craft, infra.

3. Petitioners deprived respondents of an interest in property without due process of law. Pp. 12–22

(a) Notice in a case of this kind does not comport with constitutional requirements when it does not advise the customer of the availability of an administrative procedure for protesting a threatened termination of utility services as unjustified, and since no such notice was given respondents, despite "good faith efforts" on their part, they were not accorded due notice. Pp. 13–15.

(b) Due process requires, at a minimum, the provision of an opportunity for presenting to designated personnel empowered to rectify error a customer's complaint that he is being overcharged or charged for services not rendered, and here such a procedure was not made available to respondents. The customer's interest in not having services terminated is self-evident, the risk of erroneous deprivation of services is not insubstantial, and the utility's interests are not incompatible with affording the notice and procedure described above. *Mathews* v. *Eldridge*, 424 U. S. 319. Pp. 16–19.

After, Craft, supra, a constantly growing line of cases arose where in state after state statutes were struck down because of not providing "Due Notice" consisting of notice of state & federal defenses and a SPEEDY MEANS OF ACHIEVING THESE DEFENSES.

Probably the most recent is Rhode Island

Dionne v Bouley
53 LW 2487 1st CA

"Due process requires the state to spell out more clearly procedural rights and remedies"

Another recent state is Tennesse

Myers v City of Alcoa
53 LW 2363 6th C A

> "Craft mandated that a customer who disputed his bill is to be given opportunity to meet with responsible employee to resolve dispute prior to termination"

In 1983 in Connecticut two situations arose where statutes were struck down for failing to meet "Due Notice" requirements and for not PROVIDING NOTICE OF STATE & FEDERAL DEFENSES & A SPEEDY MECHANISM TO ACHIEVE THESE DEFENSES

First was a post judgment situation where it was held AFTER JUDGMENT before wage execution levied debtor has a "Due Notice" right to NOTICE OF STATE & FEDERAL DEFENSES & SPEEDY MECHANISM FOR RELIEF.

Wright v Tanezio
USDC Conn No 81-353
3-11-83

> "Conn GS 52-361 fails to provide prior to wage execution... a speedy adequate and meaningful opportunity to be heard at a meaningful time"

"1st - does not require notice to debtor

2nd - no procedure to promptly, simply and inexpensively challenge the validity of execution

3rd- statute fails to provide notice to debtor of existance of state & federal exemptions"

The second was the state "IRS intercept" statute that permitted the state to recover support for children by levy upon IRS refunds. It was held that "Due Notice" required NOTICE OF STATE & & FEDERAL DEFENSES & A SPEEDY MECHANISM TO ACHIEVE THESE DEFENSES"

Nelson v Regan
560 F Supp 1101
1983

8. Constitutional Law ⇐286
Internal Revenue ⇐4973

Federal-state intercept program, under which federal income tax refunds may be transferred to state to extent of taxpayer's past-due support obligations, violated taxpayer's due process rights, in that preintercept notice and postintercept notice failed to meet due process requirements for notice, as neither mentioned possible defenses individual might have to interception of tax refunds or the availability of regular procedures in which to challenge offset, and taxpayers did not have available an opportunity be heard at a meaningful time and in a meaningful manner. Social Security Act, § 464, as amended, 42 U.S.C.A. § 664; 26 U.S.C.A. §§ 6305, 6402; U.S.C.A. Const. Amends. 5, 14.

The Conn Sup Ct speaks of the trial Court as having "authority" which this Court knows to be a false, a phantom, a fraudulent authority since it is self created by adoption of P.B. 506-510 in violation of Conn GS 51-14 limiting power over rules to "rules of practice"

The opinion below is TOTALLY BARREN OF ANY CONSIDERATION OF "DUE NOTICE" NOR OF ANY CONSIDERATION OF STATE & FEDERAL DEFENSES NOR OF SPEEDY MECHANISM WITH WHICH THESE DEFENSES COULD BE ACHIEVED!

The Opinion grandly goes on to talk of "make any such order in the action as the exigencies of the case may require" This refers to former language of PB 509:

> "The court... may make such orders for the governance of the receiver as circumstances may require"

This language is assumed to over ride the DUE PROCESS clause of the 5th & 14th Amendments to the U.S. CONSTITUTION. Nowhere is "exigencies" or "circumstances" defined in the rules nor in any reported decision of the Conn Sup Court. This bland langauge is the authority according to 196 Conn 172, this action, for denial to this Petitioner notice and hearing when the substitute rent receiver was appointed.

The clear command of the 1st CA in Dionne, supra, controls... "due process requires the state (Connecticut) to spell out more clearly procedural rights and remedies".

However, the "Due Notice" rights were totally ignored in the state court proceedings where this Petitioner was denied the right to have former rent receiver terminated and as Owner to take over and denied notice or hearingwhen the Court in clandestine ex parte proceedings in

Chambers or on phone with help of Bank's counsel selected and appointed the substitute rent receiver subject of this Petition.

In this action SHOCKING is the disparity between the above well reasoned cases all consistent with THIS HONORABLE COURT's ruling in Craft, Supra, and this action!

Hartford Federal S & L v Tucker
196 Conn at 176

"no violation of due process occurs ... if party given a court hearing"

The language in the Conn Practice Book and the facts of this action show most clearly the hearing is not "meaningful"

I.G. PETITIONER HAS BEEN DENIED FEDERAL RIGHTS IN STATE COURT APPOINTMENTS OF RENT RECEIVERS.

The facts of this action show that the Petitioner denied fundamental federally guaranteed rights affirmed by this Court in other actions.

1. Petitioner was denied equal right to be receiver of property he owned a right this Court upheld in Mitchell v Grant 416 US 600

2. Petitioner was denied a meaningful speedy hearing on merits at which he could seek discharge of rent receiver Mitchell v Grant 416 US 606

3. Petitioner was denied a hearing at which he could seek damages and counsel fees against bank for violation of its fiduciary duties. Mitchell v Grant 416 US 606

4. Petitioner was denied "DUE NOTICE" including notice of state & federal defenses. Mathew & Craft, supra.

5. Petitioner was denied "DUE NOTICE" to include notice of speedy mechanism-to present his state & federal defenses. Mathew & Craft, supra.

II. AWARD OF FEES WITHOUT DUE PROCESS AND CONTRARY TO FEDERAL LAW

A. FEES AWARDED WITHOUT TESTIMONY

No testimony offered by bank to support the award of fees of $38,590 much of which included time in bankruptcy court. There is no foundation for the award other than affidavit of counsel which Petitioner opposed by testimony.

B. FEES INCLUDED TIME IN BANKRUPTCY COURT WHERE BANK WAS EXEMPT BEING FEDERALLY CHARTERED.

Bankruptcy laws make federally chartered savings and loans immune from having their lien altered and immediatly the bank petitioned for relief from stay which was granted.

However, the Conn Sup Ct overlooked the federal law and awarded fees based on law flowing from state savings bank.

gaged property. Legal fees were incurred by the plaintiff when it was named a party creditor in an action brought by the defendant in the federal bankruptcy court. The defendant's argument as to the propriety of including amounts attributable to bankruptcy proceedings in its award was effectively disposed of in *Mechanics Savings Bank* v. *Tucker*, 178 Conn. 640, 425 A.2d 124 (1979), wherein we stated that although federal bankruptcy proceedings "do not impinge directly on valid security interests, we are not prepared to say that such proceedings are necessarily so remote from the interests of a mortgagee" that the defendant, without any evidentiary showing, can avoid responsibility for such costs. Id., 647–49.

An important federal question has been decided by the Conn Sup Court contrary to federal law which permits award of counsel fees to creditors who assist in preparation or adoption of a real property arrangement plan with no provision for creditor who obtains relief from stay. No fees applied for and none awarded in bankruptcy court. Other state courts have denied fees for time in other courts.

City of Utica v Gold Metal Packing
283 NYS 2d 603 1967
"mortgage language not providing for fees in other courts" -27-

III. STATE COURT DENIED HEARING TO PRESENT CLAIMS AGAINST BANK FOR LOSSES & WASTE CAUSED BY ITS VIOLATION OF FIDUCIARY DUTIES.

Petitioner claims the bank had fiduciary duties in the seizure of all rents and full control of the property under a Mortgage Conditional Assigment of Rents.

Using losses its own illegal receiver created the Bank started this foreclosure and appointed on hearsay motion the present rent receiver. Th Bank controlled the receiver refusing to raise rents to market level, opposing all motions to terminate or control the rent receiver.

Indeed so cooperative was the Conn Court to the Bank that it can fairly be called a kangaroo court.

But in a recent case this Court affirmed fiduciary duties over the United States because Congress passed laws appointing a federal agency over

Indian lands made the U.S. liable for damages for waste and negligent management. Is not Hartford Federal S & L Also liable for similar damages and is not Petitioner entitled to hearing?

Mitchell v U.S.
664 F 2d 665 1981

Individual allottees of land in Indian reservation sued Government to recover damages for alleged mismanagement. On remand from the United States Supreme Court, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2d 607, reversing Court of Claims, 591 F.2d 1300, the Court of Claims, Davis, J., held that: (1) timber sales statute, statute providing for regulations and sustained yield and statute concerning rights-of-way give federal officials full authority to manage Indian forest property and land and thereby create fiduciary relationship, and plaintiff Indians could recover, on proof, for

breach of such fiduciary obligations and obtain compensation provided by the statutes, although recovery would be limited in reach and scope: (2) under such statutes, Indians could sue for any fall-off from income they would have received from their forests and lands if Government had properly complied with directive of statutes and regulations, and for value or decrease in value of their property which was lost or diminished in value through improper actions of Department of Interior, '

There is no difference between the fiduciary duty imposed on the U.S. and the same fiduciary duty imposed on Bank by its seizure of control of the property and of the rents of Petitioner.

CONCLUSION

This Court should summarilly reverse the decision below retaining jurisdiction to ensure appropriate amendment to Conn. Practice Book to give "DUE NOTICE" The award of counsel fees should be vacated as contrary to federal law and without due process. Hearing should be directed on Petitioners claims for Bank's violation of its fiduciary duties as to its rent receiver. This hearing ordered in speedy time against both bank & its rent receiver.

In the alternative probable jurisdiction should be noted.

RESPECTFULLY: -30-

STANLEY V. TUCKER
Petitioner

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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HARTFORD FEDERAL SAVINGS AND LOAN ASSOCIATION *v.* STANLEY V. TUCKER ET AL. (11189)

PETERS, C. J., DANNEHY, ASPELL, F. HENNESSY and MENT, Js.

The named defendant, T, appealed to this court from the trial court's judgment of strict foreclosure on four of his properties for which a receiver had been appointed. *Held:*

1. Because it was clear from the record and from T's own admissions that he had been given notice of and a meaningful opportunity to be heard on the appointment of a rent receiver for his properties, T failed to prove that he was denied due process.
2. T's claim that the rules of practice governing rent receivers are constitutionally defective because they provide no mechanism for the discharge of a receiver who is negligent or who commits waste was without merit.
3. The trial court did not abuse its discretion in appointing the rent receiver it did appoint.
4. Because the institution of foreclosure proceedings is a valid exercise of a mortgagee's acceleration rights, the trial court did not err in finding that the mortgage debt here had been accelerated.
5. Because T's tender of payment on two of the properties was not unconditional and unqualified, the trial court's finding that no legal tender had occurred as to those two properties was not clearly erroneous.
6. T's claim that the trial court erred in including in its determination of the amount of the mortgage debt amounts for escrow overdraft, legal fees incurred by the plaintiff in a related bankruptcy proceeding and attorney's fees was unpersuasive.
7. This court could find no authority to support T's claim that the plaintiff, by permitting a junior lienholder, a utility company, to collect rents pursuant to a utility receivership, waived its rights under its mortgage.
8. The trial court's valuation of the subject properties was supported by the evidence and the court did not abuse its discretion in ordering strict foreclosure.

Argued February 14—decision released May 7, 1985

Action for, inter alia, mortgage foreclosure on four properties owned by the named defendant, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the court, *Vasington, J.*, granted the plaintiff's motion for appointment of a receiver of rents; the court, *Barall, J.*, rendered judgment of strict foreclosure on each prop-

erty; from these and other decisions of the court, the named defendant appealed to this court. *No error.*

Stanley V. Tucker, pro se, the appellant (defendant).

Robert B. Basine, for the appellee (plaintiff).

Frederick D. Augenstern, for the receiver of rents (Frances Gionfrido).

DANNEHY, J. These cases were before this court in a previous appeal by the named defendant, Stanley V. Tucker (hereinafter the defendant), from judgments of foreclosure; *Hartford Federal Savings & Loan Assn.* v. *Tucker,* 181 Conn. 607, 436 A.2d 1259 (1980); and the following facts appeared.

On September 15, 1978, Hartford Federal Savings and Loan Association, the plaintiff, commenced four separate mortgage foreclosure proceedings against Stanley V. Tucker, the defendant, as owner of the equity of redemption, and other defendants, concerning four properties located at 65 and 69 Amity Street, 963 Capitol Avenue and 38 South Whitney Street, all in Hartford. On December 1, 1978, pursuant to General Statutes § 52-87, concerning notices to out-of-state defendants, the defendant's motion for a statutory continuance was granted.

Upon written motion of the plaintiff, the trial court appointed a rent receiver for all four properties. Subsequently, on March 13, 1979, the plaintiff moved for default for failure to plead and for judgment against the defendant. The motion for default came before the court on April 20, 1979. On that day, before court opened, the defendant filed his answer, special defenses and counterclaims. The trial court, however, held that the defendant's pleadings were "improper," "improperly filed," and "not in accordance with the Practice Book," and refused to accept them. The court then

ordered that a default be entered against the defendant for failure to plead. The plaintiff thereafter pursued its motion for judgment which was heard and argued by the parties on April 20, 1979, and April 23, 1979.

The court ordered a foreclosure by sale for the premises at 65 Amity Street and 38 South Whitney Street, and strict foreclosure for the premises at 69 Amity Street and 963 Capitol Avenue. From the judgments rendered the defendant appealed to this court.

On appeal, this court held that the defendant's pleadings were not untimely at the time they were filed and set aside the judgments of the trial court. *Hartford Federal Savings & Loan Assn.* v. *Tucker,* supra, 609.

These four cases were tried together and the facts discussed are equally applicable to each case. The complaints are the same and rely quite simply upon nonpayment. On remand, the defendant denied nonpayment and pleaded special defenses. The defendant's answer additionally pleaded counterclaims for damages. On January 28, 1981, the plaintiff moved to strike the special defenses and counterclaims as demonstrably improper and constituting no defense. The trial court, *Hammer, J.,* on March 9, 1981, granted the motion in its entirety. Thereafter, on March 24, 1981, the defendant filed a substitute answer which contained in substance special defenses and counterclaims identical to those that were stricken on the plaintiff's motion.

On October 26, 1981, the plaintiff applied for the appointment of a new receiver of rents because the former rent receiver had resigned. The defendant made timely objection and moved for a judgment declaring Practice Book §§ 504 through 510 unconstitutional and void. He also applied that he himself be appointed as rent receiver. After a hearing, the trial court, *Vasington, J.,* denied the defendant's motions and

appointed Plaza Realty as rent receiver on December 21, 1981. From those orders the defendant filed the present appeal.[1] After a trial to the court, final judgments of strict foreclosure on all four properties were rendered by *Barall, J.*, on August 17, 1983. The defendant appealed.

The defendant's appeal is in two parts; first, his attack on the constitutionality of the procedures for the appointment of rent receivers, and second, his claims of error with regard to the final judgments of foreclosure.

I

An action of foreclosure is peculiarly equitable and the court may entertain all questions which are necessary to be determined in order that complete justice may be done between the parties. *Beach* v. *Isacs,* 105 Conn. 169, 176, 134 A. 787 (1926). The object of appointing receivers is to secure the property in dispute from waste or loss. 2 Swift, Digest, p. 159. It is not the office of a court of equity to appoint receivers as a mode of granting ultimate relief. They are appointed as a measure ancillary to the enforcement of some recognized equitable right. The complaints presently before us patently warrant such relief for the plaintiff. *Brand* v. *Woolson,* 120 Conn. 211, 214, 180 A. 293 (1935). The assets to which it would naturally look for payment may be wasted or lost during protracted litigation. The procedure for the appointment of receivers outlined by Chief Justice Swift has been merely supplemented by our rules of practice. 2 Swift, Digest, pp. 159–60; Practice Book §§ 504 through 510.

The defendant's claim, that the grant of the plaintiff's applications for the appointment of rent receivers

[1] Since that time, the defendant has made numerous motions, most of which have been denied, and he has repeatedly amended his appeal to include those denials as well as new issues.

denied him due process of law, is clearly untenable. His argument that Practice Book §§ 504 through 510 are unconstitutional because they allow for the ex parte appointment of a rent receiver without notice and an opportunity to be heard is even less persuasive.[2]

Due process does not mandate a particular procedure but rather requires only that certain safeguards exist in whatever procedural form is afforded. See *Fermont Division* v. *Smith*, 178 Conn. 393, 397, 423 A.2d 80 (1979), and cases cited therein. The fourteenth amendment prohibits the state from denying any person life, liberty or property without due process of law, but this adds nothing to the rights of one citizen as against another. *United States* v. *Cruikshank*, 92 U.S. 542, 554, 23 L. Ed. 588 (1876). The amendment "in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided." *Iowa Central Ry. Co.* v. *Iowa*, 160 U.S. 389, 393, 16 S. Ct. 344, 40 L. Ed. 467 (1896). That opportunity is amply afforded by the rules under attack. In the first place, every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and no appointment may be made without notice unless sufficient cause appears. Practice Book § 506. Moreover, there is no violation of due process when a party in interest is given the opportunity at a meaningful time for a court hearing

[2] Practice Book § 506 specifically provides for the appointment of a rent receiver: "Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears."

to litigate the question of the appointment of a receiver. In view of these safeguards we find unpersuasive the defendant's argument that the rules for the appointment of a receiver of rents are unconstitutional.

The defendant admits that he received notice of both the 1979 and 1981 applications for appointment of rent receivers and that full evidentiary hearings on each application were had. The defendant appeared with counsel at the hearing Judge O'Neill held on the plaintiff's motion for appointment of the first rent receiver. At that time, the defendant indicated that he did not "anticipate there would ever be any complaint on my part against" the proposed rent receiver, Frank Smith. The trial court then appointed Mr. Smith as rent receiver. The defendant was also present at the hearing held with respect to the appointment of the second rent receiver. He testified that he collected the rents from the four mortgaged properties for two months after the resignation of the rent receiver Frank Smith. He admitted that he had made no payments on the mortgage debt or for taxes during that period of time. The manager of Plaza Realty testified as to that firm's qualifications. He was then cross-examined extensively by the defendant. At the close of all the testimony, the trial court, *Vasington, J.*, appointed Plaza Realty as rent receiver.

It is clear from the record and from the defendant's own admission that he was given notice and a meaningful opportunity to be heard if he had objection to the appointment of a rent receiver. Under the facts of these cases, the defendant has failed to prove that our rules of practice denied him due process of law.

The defendant also claims that the rent receiver procedures are constitutionally deficient because they provide no mechanism for the discharge of a rent receiver who is negligent or committing waste. This claim is without merit.

A receiver of rents is subject, under our rules, to removal at any time at the pleasure of the court. Practice Book § 502.[3] Any party in interest, like the defendant here, may at any time move for the discharge of the receiver; Practice Book § 508;[4] or alternatively may seek the court's permission to sue the receiver. "[A] receiver is an officer of the court appointed on behalf of all who may establish an interest in the property." *Bergin* v. *Robbins,* 109 Conn. 329, 335, 146 A. 724 (1929). The receiver holds the property as an arm of the court and his possession is not that of the mortgagee. *Desiderio* v. *Iadonisi,* 115 Conn. 652, 655, 163 A. 254 (1932). If a receiver neglects to perform the duties required of him, the proper procedure is to petition the court for his removal. General Statutes § 52-513; Practice Book § 508; *Links* v. *Connecticut River Banking Co.,* 66 Conn. 277, 282, 33 A. 1003 (1895). A receiver may also be subject to suit, but only with the permission of the court. Id., 284. The requirement of court permission is essential for the protection of receivers against unnecessary and oppressive litigation. *Walsh* v. *Raymond,* 58 Conn. 251, 255–56, 20 A. 464 (1889). A receiver is presumed to be acting according to the will of the appointing judicial authority. *Links* v. *Connecticut River Banking Co.,* supra, 284. As such, consent to sue will not be granted where the receiver has kept clearly within the scope of his authority and acted wholly under the direction of the court. *Walsh* v. *Raymond,* supra, 255. This does not mean that a receiver while acting as such cannot be held personally

[3] "[Practice Book] Sec. 502. REMOVAL OF RECEIVERS

"Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed him, or, if such court is not in session, a judge thereof, may fill the vacancy."

[4] "[Practice Book] Sec. 508. —DISCHARGE

"Any party in interest may at any time move for the discharge of the receiver."

liable for his actions, but simply that he will be protected so long as he acts strictly under the orders of the court appointing him. Id., 256.

We have carefully reviewed the pertinent parts of the record and transcript and we find that the defendant was afforded every opportunity in the trial court to pursue his complaints concerning the receivers of the rents. On at least two occasions, the defendant was advised that he could not, in his counterclaims, attack the plaintiff on the basis of any alleged misconduct on the part of the court-appointed receiver. The proper course, he was instructed by the court, was either to petition the court for removal of the rent receiver or to request the court's permission to sue the rent receiver. The defendant elected to object to the appointment of a new receiver of rents. The application for the appointment of a new receiver of rents was addressed to the sound legal discretion of the court, to be exercised with due regard to the rules, and such exercise is not to be disturbed lightly unless abuse of discretion or other material error occurs. 2 Swift, Digest, p. 160. The defendant alleged that he was better qualified to collect the rents. The plaintiff denied this was true. It was thus an issuable question of fact. The trial court found adversely to the defendant in this regard and refused to appoint him as receiver of rents. As we read the evidence available to us, we cannot say that this conclusion did not have a reasonable basis in fact. That being so, it was not an unreasonable or arbitrary exercise of discretion which led the trial court to appoint Plaza Realty as rent receiver.

II

The defendant has attacked the judgments of strict foreclosure on several grounds, claiming that the trial court erred: (1) in finding that the mortgage debts were accelerated; (2) in finding that the defendant did not

tender payment of the mortgage debt in accordance with General Statutes § 49-8; (3) in its award of certain costs and legal fees; (4) in denying the defendant's special defenses and counterclaims; and (5) in ordering strict foreclosure as opposed to foreclosure by sale.

We note that the majority of the defendant's claims are challenges to findings of fact made by the trial court. Our review will be limited to whether the determination of the trier was clearly erroneous in light of the evidence and the pleadings in the record as a whole. Practice Book § 3060D; *Pandolphe's Auto Parts, Inc.* v. *Manchester,* 181 Conn. 217, 221–22, 435 A.2d 24 (1980).

The defendant contends that the bank did not effectively exercise its option to accelerate the mortgage debt because the defendant received no notice of acceleration. The short answer to this contention is that the institution of a foreclosure action constitutes a valid exercise of a mortgagee's acceleration right. See, e.g., *United Benefit Life Ins. Co.* v. *Holman,* 177 Neb. 682, 684–85, 130 N.W.2d 593 (1964). The defendant does not dispute that he received proper notice of the institution of the foreclosure actions.

The defendant next argues that, pursuant to General Statutes § 49-8 (a),[5] he tendered payment of the full debt on two of the mortgaged properties, and that a

[5] "[General Statutes] Sec. 49-8. RELEASE OF SATISFIED OR PARTIALLY SATISFIED MORTGAGE OR INEFFECTIVE ATTACHMENT, LIS PENDENS OR LIEN. DAMAGES. (a) The mortgagee or a person authorized by law to release the mortgage shall execute and deliver a release to the extent of the satisfaction tendered before or against receipt of the release: (1) Upon the satisfaction of the mortgage or (2) upon a bona fide offer to satisfy the same in accordance with the terms of the mortgage deed upon the execution of a release, or (3) when the parties in interest have agreed in writing to a partial release of the mortgage where that part of the property securing the partially satisfied mortgage is sufficiently definite and certain, or (4) when the mortgagor has made a bona fide offer in accordance with the terms of the mortgage deed for such partial satisfaction on the execution of such partial release."

bank officer accepted his offer. Although no money ever changed hands, the defendant maintains that the bank lost its right to foreclose on those two properties. "[The mortgagee] is not bound to tender or offer a release of the mortgage until the debt is satisfied." *Barnes* v. *Upham*, 93 Conn. 491, 495, 107 A. 300 (1919). The defendant's offer was conditioned on the plaintiff's acceptance of less than the full amount of the mortgage debts for a full release of the mortgages and on an agreement by the plaintiff to discharge the rent receiver. "A tender must be unconditional and unqualified." (Citation omitted.) *Housing Authority* v. *Pezenik*, 137 Conn. 442, 447, 78 A.2d 546 (1951). Under the circumstances, the trial court's finding that no legal tender was made is not clearly erroneous.

It is also argued that the trial court erred in including in its determination of the mortgage debt certain sums for escrow overdraft, legal fees incurred by the plaintiff in defending its lien in federal bankruptcy court, and attorney's fees. The defendant claims that neither the complaint nor the mortgage deeds and notes provided for the allowance of escrow overdraft and expenses incurred prior to the commencement of foreclosure. We have stated that "[i]n the absence of a request for a more specific statement the complaint need not detail the elements constituting the mortgage debt." *Burritt Mutual Savings Bank of New Britain* v. *Tucker*, 183 Conn. 369, 375, 439 A.2d 396 (1981). The notes and mortgage deeds signed by the defendant obligated him to pay " 'all costs of collection, including reasonable attorney's fees incurred in any action to collect this note or foreclosure [sic] the mortgage securing the same, or in protecting or sustaining the lien of such mortgage.' " The escrow funds were used by the plaintiff to make tax and insurance payments on behalf of the defendant. The trial court was entitled to consider these costs as necessary to protect the mort-

gaged property. Legal fees were incurred by the plaintiff when it was named a party creditor in an action brought by the defendant in the federal bankruptcy court. The defendant's argument as to the propriety of including amounts attributable to bankruptcy proceedings in its award was effectively disposed of in *Mechanics Savings Bank* v. *Tucker*, 178 Conn. 640, 425 A.2d 124 (1979), wherein we stated that although federal bankruptcy proceedings "do not impinge directly on valid security interests, we are not prepared to say that such proceedings are necessarily so remote from the interests of a mortgagee" that the defendant, without any evidentiary showing, can avoid responsibility for such costs. Id., 647–49.

With respect to attorney's fees, the defendant's claim that part of the award to the plaintiff included fees for time spent pursuing the first foreclosure judgments which were overturned on appeal is frivolous. In its memorandum of decision, the trial court specifically excluded any claims for costs and fees for the appeals. The defendant's complaint that the amount of counsel fees was excessive is similarly unavailing. The trial court exercised discretion and awarded counsel fees based upon the necessary time required and the necessity of a trial. The trial court used the correct criteria and was able to observe at first hand the efforts of the plaintiff's counsel in the face of the defendant's stubborn defenses. The award rested in sound judicial discretion. We cannot say the amount allowed was excessive.

The defendant further argues that the trial court erred in rejecting his special defenses and counterclaims. We need only discuss his first special defense and first counterclaim as the remaining defenses and counterclaims either relate to the appointment and conduct of the rent receivers; see part I, supra; or have been abandoned on appeal.

The essence of the defendant's first special defense and first counterclaim is that the plaintiff, by negligently allowing a junior lienholder, Hartford Electric Light Company, to collect rents pursuant to a utility receivership, waived any claims it had under its mortgage. We can find no authority for the defendant's position that a mortgagee has a duty to step in and protect a mortgagor when a utility receivership is ordered under General Statutes § 16-262f. To the contrary, as we indicated in *Hartford Electric Light Co.* v. *Tucker*, 183 Conn. 85, 94, 438 A.2d 828 (1981), that a utility receivership may well lead to a mortgage foreclosure is a policy argument to be addressed to the legislature and not the courts.

Finally, the defendant claims that the trial court erred in its valuation of the mortgaged properties and in its orders for strict foreclosure. The trial court heard extensive testimony from both the plaintiff's and the defendant's appraiser as to the value of the properties. "The determination of [their] value by a court is the expression of the court's opinion aided ordinarily by the opinions of expert witnesses, and reached by weighing those opinions in the light of all the circumstances in evidence bearing upon value and its own general knowledge of the elements going to establish it. *Appeal of Cohen*, 117 Conn. 75, 85, 166 Atl. 747 [1933]." *Lomas & Nettleton Co.* v. *Waterbury*, 122 Conn. 228, 233, 188 A. 433 (1936). The trial court's conclusion as to the value of the properties was necessarily based upon the opinions of the appraisers and finds support in the evidence. It is axiomatic that the determination of the credibility of expert witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is privileged to adopt whatever testimony he reasonably believes to be credible. *Greenfield Development Co.* v. *Wood*, 172 Conn. 446, 451, 374 A.2d 1084 (1977).

In light of our conclusion that the trial court's valuation of the properties is supported by the evidence, the defendant's remaining claim, that the trial court erred in ordering strict foreclosure as opposed to foreclosure by sale, must also fail. In Connecticut, the law is well settled that whether a mortgage is to be foreclosed by sale or by strict foreclosure is a matter within the sound discretion of the trial court. General Statutes § 49-24; *City Savings Bank* v. *Lawler*, 163 Conn. 149, 155, 302 A.2d 252 (1972); *Hartford Federal Savings & Loan Assn.* v. *Lenczyk*, 153 Conn. 457, 463, 217 A.2d 694 (1966). "The foreclosure of a mortgage by sale is not a matter of right, but rests in the discretion of the court before which the foreclosure proceedings are pending." *Bradford Realty Corporation* v. *Beetz*, 108 Conn. 26, 31, 142 A. 395 (1928). Having determined the fair market value of the properties and the amount of the mortgage debts, the trial court concluded that strict foreclosure was necessary. There was no abuse of discretion.

In conclusion we note that this litigation has lasted more than six years. The defendant, a layman, tried his own cases and argued his own appeal. Neither at trial nor on appeal has he failed to controvert each fact and challenge every ruling. While we do not fault his representation, we do caution against arguments of frivolous or contrived issues. On reviewing the matter, we have followed the liberal policy usual where a layman appears pro se and have carefully considered his claims so far as they are fairly presented upon the record. We conclude that there is no merit to his claims and that no injustice has been done to him under the law.

There is no error; the cases are remanded to the Superior Court for the fixing of new law days and other necessary orders not inconsistent with this opinion.

In this opinion the other judges concurred.

MOTION FOR REHEARING

The appellant, STANLEY V. TUCKER, moves this court to reargue decision of 5/7/85 upon good grounds below:

1. This Court's decision clashes with a line of cases by the UNITED STATES SUP COURT that hold the notice given under P. B. 505 - 510 is NO NOTICE AT ALL.

2. Plaintiff bank offered no testimony in support of claim for fees but the defendant offered testimony against fees.

3. This court has decided an important federal question contrary to laws by Congress and contrary to decisions of the UNITED STATES SUPREME COURT.

4. Defendant's tender of payment on two properties was not unilateral but accepted by agent for bank.

5. Acceleration by foreclosure not raised in lower court.

May 16th,1985 STANLEY V.TUCKER

ORDER

Motion ordered denied. THE COURT 6/4/85

PARTIAL TRANSCRIPT

This court asked to take judicial notice of partial transcript, original on file Conn. Sup Ct of key remarks when Plaza applied for permission to destroy 2 family and was terminated. No 224027 Htfd Fed. v Tucker Hon John D Brennen 5/25/83

Court - "would it be right to close pre-
Page 1 mises when people need them

Court - What do you lose if I terminate receiver?"

Counsel for Bank - "A novel approach"

Court - "I think it would be better to
Page 3 get rid of receiver"

Court - "I dont think anyone did any
Page 5 better than Mr Tucker"

Court- "Mr Tucker is not benefiting, no one is benefiting, receiver
Page 9 may be benefiting"

Court - "I think it a terrible thing to
Page 10 keep house locked up which might be fixed so people have place to live"

Court - "For reasons I've stated I will grant motion to terminate receiver "